

DATED

7<sup>th</sup> May 2024

**SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE TOWN AND COUNTRY PLANNING ACT  
1990 RELATING TO LAND AT SHERBRO HOUSE, COLCHESTER MAIN ROAD, ALRESFORD, COLCHESTER  
(planning reference 23/01700/DOVU5 and 19/01858/OUT)**

between

**TENDRING DISTRICT COUNCIL**

and

**LANE HOMES (SHERBRO) LIMITED**

and

**ALDERMORE BANK PLC**

And

**BLOOMSBURY PROPERTY FINANCE LIMITED**



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This Deed of Variation is dated 7<sup>th</sup> May

2024

## Parties

- (1) **TENDRING DISTRICT COUNCIL** of Town Hall, Station Road, Clacton-on-Sea, CO15 1SE ("the Council")
- (2) **LANE HOMES (SHERBRO) LTD** incorporated and registered in England and Wales (with company number 12455274) whose registered office is at 2 Colchester Road, St. Osyth, Clacton-On-Sea, England, CO16 8HA ("the Owner")
- (3) **ALDERMORE BANK PLC** (registered number 00947662) a company incorporated in England and Wales and having its registered office at Apex Plaza, Forbury Road, Reading RG1 1AX ("the First Lender")
- (4) **BLOOMSBURY PROPERTY FINANCE LIMITED** incorporated and registered in England and Wales (with company number 06726369) whose registered office is at Knowles Farm, Wycke Hill, Maldon, Essex, CM9 6SH ("the Second Lender")

together referred to as 'the parties'

## BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Land is situated.
- (B) The Owner is the freehold owner of the Land subject to mortgages in favour of the First Lender and the Second Lender but otherwise free from encumbrances that would prevent the Owner from entering into this Deed.
- (C) The First Lender is the registered proprietor of the charge dated 29<sup>th</sup> April 2022 referred to in entry numbers 1- 3 of the charges register of Title number EX588044 and has agreed to enter into this Deed to give its consent to the terms of this Deed.
- (D) The Second Lender is the proprietor of a charge dated 17<sup>th</sup> January 2024 which is pending registration against the Land and has agreed to enter into this Deed to give its consent to the terms of this Deed.
- (E) On 23 March 2020, the then landowner, Michael McQuillan and Linda McQuillan gave the Original Undertaking to the Council in respect of the Planning Application for the Development.
- (F) On 8<sup>th</sup> April 2020 the Council granted the Planning Permission for the Development subject to conditions and the Original Undertaking.
- (G) Without prejudice to the terms of the other covenants contained in the Original Undertaking, the Council has been requested and the parties have agreed to vary the terms of Original Undertaking as set out in this Deed.

- (H) This Deed is made under section 106A of the TCPA 1990 which varies and is supplemental to the Original Undertaking.

### **Agreed terms**

#### **1. Interpretation**

The following definitions and rules of interpretation apply in this Deed.

##### **1.1 Definitions:**

**Development:** the erection of five dwellings as described in the Planning Application.

**Land:** the freehold land and buildings as registered at H M Land Registry under title number EX588044.

**Original Undertaking:** the unilateral undertaking made under section 106 of the TCPA 1990 dated 23 March 2020 by Michael McQuillan and Linda McQuillan (the then landowner) to the Council in respect of the Planning Application under reference 19/01858/OUT

**Planning Application:** the application made under reference 19/01858/OUT for the Development

**Planning Permission:** the planning permission granted by the Council pursuant to the Planning Application for the Development under planning reference 19/01858/OUT.

**TCPA 1990:** Town and Country Planning Act 1990 (as amended)

- 1.2 Unless the context otherwise requires, all words and phrases defined in the Original Undertaking shall have the same meaning in this Deed.
- 1.3 Clause headings shall not affect the interpretation of this Deed.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Any words following the terms "including, include, in particular, for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.11 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 1.12 Except to the extent that they are inconsistent with the definitions and interpretations in Clause 1 of this deed, the definitions and interpretations in the Original Undertaking shall apply to this deed.

## **2. Statutory provision**

2.1 This Deed is supplemental to and varies the Original Undertaking and is made pursuant to Section 106 and 106A of the TCPA 1990 and the covenants and obligations contained in this Deed are planning obligations for the purposes of Section 106 of the TCPA 1990 enforceable by the Council and to the extent that any obligations contained in this Deed are not planning obligations within the meaning of the TCPA 1990 they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.

2.2 The covenants, restrictions and obligations contained in this Deed are entered into by the Owner with the intention that they bind the interests held by the Owner in the Land and their respective successors and assigns.

2.3 The Owner warrants that they have full power to enter into this Deed and there is no other person save for as recited in this Deed whose consent is necessary to make this Deed binding on the Land.

2.4 The terms and conditions of the Original Undertaking shall remain in full force and effect except as varied by this Deed.

## **3. Variations to the Original Undertaking**

- 3.1 The parties agree that the Original Undertaking is varied as follows:
- 3.2 The words "Before commencement of the Development" shall be deleted from Paragraph 1 of the Fifth Schedule to the Original Undertaking and replaced with the following: "On the date of legal completion of the sale of the fourth dwelling forming part of the Development".

- 3.3 The words in Paragraph 2 of the Fifth Schedule to the Original Undertaking shall be deleted in their entirety and replaced with the following words:

“Not to occupy cause or permit to be occupied more than four dwellings forming part of the Development unless and until the said Public Open Space Contribution has been paid to the Council.”

- 3.4 The address for the Council in Paragraph 3 of the Fifth Schedule shall be deleted and replaced with “Tendring District Council, Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE”.

- 3.5 A new Paragraph 4 shall be included in the Fifth Schedule as follows:

“Written notice of the legal completion of the sale of the fourth dwelling forming part of the Development shall be given to the Council in accordance with paragraph 3 of this Fifth Schedule.”

- 3.6 In all other respects, the Original Undertaking (as varied by this Deed) shall remain in full force and effect.

- 3.7 The Council confirms receipt of the payment pursuant to the Third Schedule of the Original Undertaking.

#### **4. Covenants to the Council**

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Undertaking as varied by this deed.

#### **5. Lenders' consent**

The First Lender consents to the completion of this Deed and acknowledges that from the date of this Deed the Land shall be bound by the terms of this Deed, as if it had been executed and registered as a land charge before the creation of the First Lender's interest in the Land. The First Lender shall otherwise have no liability to observe and/or perform the covenants, restrictions and obligations contained in the Original Undertaking as varied by this deed unless and until the First Lender takes possession of the Land and only if the covenants, restrictions and obligations remain subsisting and to be complied with.

The Second Lender consents to the completion of this Deed and acknowledges that from the date of this Deed the Land shall be bound by the terms of this Deed, as if it had been executed and registered as a land charge before the creation of the Second Lender's interest in the Land. The Second Lender shall otherwise have no liability to observe and/or perform the covenants, restrictions and obligations contained in the Original Undertaking as varied by this deed unless and until the Second Lender takes possession of the Land and only if the covenants, restrictions and obligations remain subsisting and to be complied with.

**6. Local land charge**

This Deed is a local land charge and shall be registered as such by the Council.

**7. Endorsement**

Promptly following completion of this Deed, the Council shall endorse a memorandum of variation on the Original Undertaking in the following terms:

"This Unilateral Undertaking has been varied by a supplemental deed dated .....2024 and made between Tendring District Council (1), Lane Homes (Sherbro) Limited, Aldermore Bank Plc (3) and Bloomsbury Property Finance Limited (4)"

**8. Third party rights**

A person who is not a party to this Deed does not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

**9. Costs**

On completion of this Deed the Owner will pay the Council's reasonable legal costs in connection with this Deed, up to a maximum of £892.00

**10. Other Provisions**

10.1 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission other than the Planning Permission.

10.2 If any provision of this Deed shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed to be affected or impaired.

**11. Governing law**

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the law of England and Wales.









